

Merit Systems Protection Board

§ 1201.29

filing in accordance with § 1201.14. Documents and pleadings must be served upon each party and each representative. A certificate of service stating how and when service was made must accompany each pleading. The parties must notify the appropriate Board office and one another, in writing, of any changes in the names, or addresses on the service list.

(c) *Paper size.* Pleadings and attachments must be filed on 8½ by 11-inch paper, except for good cause shown. This requirement enables the Board to comply with standards established for U.S. courts. All electronic documents must be formatted so that they will print on 8½ by 11-inch paper.

[54 FR 53504, Dec. 29, 1989; 55 FR 548, Jan. 5, 1990, as amended at 58 FR 36345, July 7, 1993; 68 FR 59862, Oct. 20, 2003; 69 FR 57629, Sept. 27, 2004]

§ 1201.27 Class appeals.

(a) *Appeal.* One or more employees may file an appeal as representatives of a class of employees. The judge will hear the case as a class appeal if he or she finds that a class appeal is the fairest and most efficient way to adjudicate the appeal and that the representative of the parties will adequately protect the interests of all parties. When a class appeal is filed, the time from the filing date until the judge issues his or her decision under paragraph (b) of this section is not counted in computing the time limit for individual members of the potential class to file individual appeals.

(b) *Procedure.* The judge will consider the appellant's request and any opposition to that request, and will issue an order within 30 days after the appeal is filed stating whether the appeal is to be heard as a class appeal. If the judge denies the request, the appellants affected by the decision may file individual appeals within 30 days after the date of receipt of the decision denying the request to be heard as a class appeal. Each individual appellant is responsible for either filing an individual appeal within the original time limit, or keeping informed of the status of a class appeal and, if the class appeal is denied, filing an individual appeal within the additional 35-day period.

(c) *Standards.* In determining whether it is appropriate to treat an appeal as a class action, the judge will be guided but not controlled by the applicable provisions of the Federal Rules of Civil Procedure.

(d) *Electronic filing.* A request to hear a case as a class appeal and any opposition thereto may not be filed in electronic form. Subsequent pleadings may be filed and served in electronic form, provided that the requirements of § 1201.14 are satisfied.

[54 FR 53504, Dec. 29, 1989, as amended at 59 FR 31109, June 17, 1994; 62 FR 59992, Nov. 6, 1997; 68 FR 59862, Oct. 20, 2003; 69 FR 57630, Sept. 27, 2004]

§ 1201.28 Case suspension procedures.

(a) *Suspension period.* The judge may issue an order suspending the processing of an appeal for up to 30 days. The judge may grant a second order suspending the processing of an appeal for up to an additional 30 days.

(b) *Early termination of suspension period.* The administrative judge may terminate the suspension period upon joint request of the parties or where the parties request the judge's assistance and the judge's involvement is likely to be extensive.

(c) *Termination of suspension period.* If the final day of any suspension period falls on a day on which the Board is closed for business, adjudication shall resume as of the first business day following the expiration of the period.

(d) *Mediation.* Whenever an appeal is accepted into the Board's Mediation Appeals Program (MAP), the processing of the appeal and all deadlines are suspended until the mediator returns the case to the judge. This provision does not apply where the parties enter into other forms of alternative dispute resolution.

[77 FR 62365, Oct. 12, 2012]

§ 1201.29 Dismissal without prejudice.

(a) *In general.* Dismissal without prejudice is a procedural option that allows for the dismissal and subsequent re-filing of an appeal.

(b) *Procedure.* Dismissal without prejudice may be granted on the judge's own motion or upon request by either party. The decision whether to dismiss

§ 1201.31

an appeal without prejudice is committed to the sound discretion of the judge, and may be granted when the interests of fairness, due process, and administrative efficiency outweigh any prejudice to either party.

(c) *Refiling.* Except in certain USERRA appeals under Part 1208 involving the use of military leave, a decision dismissing an appeal without prejudice will include a date certain by which the appeal must be refiled. The judge will determine whether the appeal must be refiled by the appellant or whether it will be automatically refiled by the judge as of a date certain. When a dismissal without prejudice is issued over the objection of the appellant, the appeal will be automatically refiled as of a date certain.

(d) *Waiver.* When a dismissed appeal must be refiled by the appellant, requests for waiver of a late filing based upon good cause will be liberally construed.

[77 FR 62365, Oct. 12, 2012]

PARTIES, REPRESENTATIVES, AND WITNESSES

§ 1201.31 Representatives.

(a) *Procedure.* A party to an appeal may be represented in any matter related to the appeal. Parties may designate a representative, revoke such a designation, and change such a designation in a signed submission, submitted as a pleading.

(b) A party may choose any representative as long as that person is willing and available to serve. The other party or parties may challenge the designation, however, on the ground that it involves a conflict of interest or a conflict of position. Any party who challenges the designation must do so by filing a motion with the judge within 15 days after the date of service of the notice of designation or 15 days after a party becomes aware of the conflict. The judge will rule on the motion before considering the merits of the appeal. These procedures apply equally to each designation of representative, regardless of whether the representative was the first one designated by a party or a subsequently designated representative. If a representative is disqualified, the judge

5 CFR Ch. II (1–13 Edition)

will give the party whose representative was disqualified a reasonable time to obtain another one.

(c) The judge, on his or her own motion, may disqualify a party's representative on the grounds described in paragraph (b) of this section.

(d) As set forth in paragraphs (d) and (e) of § 1201.43 of this part, a judge may exclude a representative from all or any portion of the proceeding before him or her for contumacious conduct or conduct prejudicial to the administration of justice.

[54 FR 53504, Dec. 29, 1989, as amended at 62 FR 62689, Nov. 25, 1997; 62 FR 66815, Dec. 22, 1997; 63 FR 35500, June 30, 1998; 65 FR 5409, Feb. 4, 2000; 68 FR 59862, Oct. 20, 2003; 69 FR 57630, Sept. 27, 2004; 77 FR 62365, Oct. 12, 2012]

§ 1201.32 Witnesses; right to representation.

Witnesses have the right to be represented when testifying. The representative of a nonparty witness has no right to examine the witness at the hearing or otherwise participate in the development of testimony.

§ 1201.33 Federal witnesses.

(a) Every Federal agency or corporation, including nonparties, must make its employees or personnel available to furnish sworn statements or to appear at a deposition or hearing when ordered by the judge to do so. When providing those statements or appearing at a deposition or at the hearing, Federal employee witnesses will be in official duty status (*i.e.*, entitled to pay and benefits including travel and per diem, where appropriate). When a desired witness is employed by an agency who is not a party to the Board proceeding, the requesting party may avail itself of the provisions of sections 1201.81 to 1201.85 of this part regarding subpoenas to ensure the attendance of the witness. In addition, the Board and the parties will implement this provision, to the maximum extent possible, to avoid conflict with other regulations governing the production of Federal employees in matters in litigation.

(b) A Federal employee who is denied the official time required by paragraph (a) of this section may file a written request that the judge order the employing agency to provide such official